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SIPDIS

SENSITIVE

DHS FOR DEPUTY SECRETARY LOY; DOJ FOR CRIMINAL DIVISION  
BRUCE SWARTZ; STATE FOR EUR PDAS RIES

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SUBJECT: SCENESETTER FOR JUNE 25 VISIT OF DHS DEPUTY  
SECRETARY ADMIRAL LOY

SIPDIS

REF: BRUSSELS 01749

1. Summary: You are coming to Brussels during a time of transition in the European Union as it absorbs 10 new member states and moves towards a new Parliament, new Commissioners and possibly a new Constitutional Treaty. At the same time, the EU is in the waning days of the Irish Presidency, and a US/EU Summit will be taking place in Ireland on the same day you will be visiting Brussels. Since the March bombings in Madrid, the EU has taken a fresh look or has revisited the question of the adequacy of its efforts to protect EU citizens from terrorism threats, as well as appointed a special coordinator for terrorism. Still, misunderstanding remains high in the Commission, Parliament, Member States and among the European population to some of the measures we consider essential to combat terrorism activities. DHS' ability to successfully and fully implement many of the security measures aimed at protecting the U.S. from incoming terrorist threats will depend on winning EU support. Your visit can be most helpful in this effort.

2. The past year has shown how prickly the EU can be when confronted with the fait accompli of U.S. homeland security measures that affect the transatlantic movement of people and goods. Issues such as PNR, CSI, and Air Marshals have all required careful managing, and future DHS measures, such as CAPPSSII and US VISIT, need similar attention. The Europeans in general do not feel the threat of international terrorism as sharply as we do, nor do they share the sense of urgency in implementing measures we see as essential. They are afraid the U.S. is moving forward blindly, indifferent to the effects of our measures on the rights of the individual. Differences among the EU member states themselves in regards to the scope and urgency of the threat, as well as the division of responsibilities between the EU and the Member States, make it difficult for the EU to act in unison or with the speed required. The message we need to deliver is: The threat of international terrorism is real and global. The U.S. is taking measures it deems necessary for our security and wants to work with the EU and its Member States to ensure that those measures are as effective as possible and minimally disruptive to the legitimate movement of people and goods. We believe that the threat is not limited to the U.S. and are willing to work with the EU as it takes measures to protect itself. The U.S. is committed to building its security in a way that protects the rights of the individual and in conformity with democratic principles. End Summary.

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A Period of Major Change Underway  
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3. There is a sense of flux and change that permeates the EU at this moment. At the beginning of May, the EU finalized its largest and most challenging enlargement, welcoming ten new members to the Union. These ten countries, all significantly poorer and for the most part ardently transatlantic in their outlook, are likely to change the dynamic of the Union precisely at a time when many other changes are in the offing. However, we should not expect that the entry of these new members will somehow tilt the EU to automatically become more pro-U.S.

4. The Commission, the EU's executive body, has already become a lame duck because of the end of this term in office.

Several of the most influential Commissioners have already announced they will not return to ministerial posts. The situation of Antonio Vitorino, the Portuguese Commissioner who manages the Justice and Home Affairs (JHA) portfolio is uncertain, but he is a long-shot candidate to replace Romano Prodi as President of the Commission. (You will meet with Director General Jonathan Faull who reports to Commissioner Vitorino.)

5. In June, voters across Europe went to the polls to elect a new European Parliament. The European Parliament has

limited powers, since it cannot initiate legislation independently, and must await proposals from the Commission. Still, it is playing a growing role in protection of European standards, and has been an especially tough nut to crack on questions of data privacy, where a majority believes our efforts on border controls, biometrics, and use of Passenger Name Records (PNR) threaten to violate individual liberties. We do not anticipate any short-term changes in the attitudes of the Parliament to our border security program,

16. Finally, the Irish Presidency is also in the home stretch of efforts to finalize negotiations on a complicated Constitutional Treaty that aims at streamlining the decision-making apparatus of a Union of 25 Member States. As part of this effort, the UK is attempting to protect a "red line" on national authority over criminal prosecution that gets to the heart of Europe-wide efforts to fully integrate its investigative and prosecutorial efforts directed at crime and terrorism: Will final competency lie on the European level, or remain in the hands of national governments? This has implications for the US as we attempt to move forward our own counter-terrorism efforts.

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Split Authority  
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17. The EU is responsible primarily for trade and customs and the movement of people, goods and services. The individual Member States making up the Union are responsible for judicial, law enforcement, intelligence gathering, defense and security. Cooperation between the individual Member States varies. Overall cooperation between all 25 can be hampered by mistrust, different views of the threat and their vulnerability, and different capabilities. We may be tempted in dealing with the Europeans to seek out individual Member States rather than with the EU as a whole, but this approach too has its drawbacks. The Container Security Initiative (CSI) was a good example where we negotiated in good faith with individual member states only to find out that the Commission claimed that the Member States did not have the authority to enter into such agreements. (The Commission is ultimately responsible for customs issues.)

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Cooperation on Combating Terrorism  
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18. Following the Madrid bombings, the EU has tried to tighten its own counter-terrorism efforts, naming a senior Coordinator to oversee the process. The Council has suggested setting up a nascent intelligence-sharing unit to help improve EU-wide responsiveness and awareness of internal terrorist threats. This work is overseen by the Political and Security Committee (PSC), a relatively new element of the EU that is responsible for the day-to-day efforts of the EU to establish a Common Foreign and Security Policy for the 25-nation Union. You will be addressing this group on Friday morning, and the audience will provide a useful opportunity to offer an overview of our homeland security efforts, and especially where they intersect with international cooperation.

19. DHS' ability to successfully implement many of the security measures aimed at protecting the US from incoming terrorist threats will depend on winning EU support. Over the past year, we have seen how difficult winning this support can be. DHS has had to deal with the EU on several sensitive issues related to implementation of counter terrorism measures aimed at protecting the U.S.: CSI, PNR, Air Marshalls, Bioterrorism, and CAPPSII. In each case, the complexity of the EU institutions and split authority between the European Commission and the 25 Member State national governments complicated our ability to reach agreement fast. Complicating our task is that European leaders and the public lack a sense of urgency and view the international terrorist threat as far less serious than the U.S. Since many in Europe do not share our perception of the degree of the threat, and because of their history of fascism and communism, they are more reluctant to take steps that they perceive as diminishing in any way the privacy and human rights of individuals. This led to a long, drawn-out negotiation on PNR. In fact, we only started to make headway when we encouraged the law enforcement and judicial side of the Commission to take an interest in the negotiations.

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Cooperation on Border Management Issues  
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10. The EU has been keen to enhance our transatlantic dialogue on border issues and is appreciative of high level visits such as yours. Passport and visa policy issues are two areas which may yet cause friction between the U.S. and the EU.

Should the 10/26/2004 passport deadline be extended by only a year, most visa waiver countries in the EU will not be in compliance. At a June 8 JHA Council meeting, the EU approved the mandatory inclusion of digitized photographs in all 25 Member State passports, with an option for a secondary biometric identifier (fingerprints). The projected timeline for all EU Member States to begin incorporating biometrics in their passports is December 2005.

11. New Member States not on the visa waiver program (VWP) continue to press for the EU to demand reciprocity or else impose a visa requirement on U.S. citizens traveling to the Schengen area. The Commission seeks to delay this confrontation by hinting to these Eastern European states that 2007 may be a more realistic target when they are fully certified to comply with Schengen border regulations. You should welcome these efforts to improve border controls, but remind EU interlocutors of the legislative parameters -- including visa refusal rates of under 4 percent -- as a starting point for VWP consideration. Related to this VWP discussion is the on-going re-certification process for existing VWP countries. Any movement to suspend or remove a current EU Member State from VWP would most likely result in a visa reciprocal visa requirement for all U.S. citizens traveling to the Schengen area.

12. The EU, particularly the incoming Dutch Presidency, has expressed concern about negative public reaction to enrolling VWP travelers in the US VISIT program as of September 30. On the one hand are practical concerns about slow downs at ports of entry given the increased number of visitors being enrolled in US VISIT. On the other hand are possible negative reactions to fingerprinting and photographing visitors at our borders.

13. The U.S. and EU have just concluded a joint mission to Interpol to further an EU-led initiative to exchange data on lost and stolen passports. You should welcome the EU's commitment (to be formally adopted on June 18) to require all 25 Member States to immediately transfer all legacy and new data on lost and stolen passports to Interpol. You should seek to build on this program by encouraging the EU to consider exchanging border lookout data with the U.S. and/or other forms of information sharing to deter terrorism or illegal immigration.

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What We Need to Do  
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14. Your visit can be most helpful in our efforts to foster greater U.S./EU cooperation in these areas. In your meetings with the PSC and DG Faull, we need to keep the EU focused on the scope of the danger and to emphasize that our measures are meant to protect us and them. We must point out that we are as devoted to human rights and democratic principles as they are; that it is in our interest to be able to move swiftly to deal with specific threats; that we want our new senior-level Policy Dialogue on Border and Transport Security to be where we raise and solve differences and search for ways to reach our objectives; and that the many expert-level dialogues between the U.S. and the EU are valuable and we want to keep them up.

SCHNABEL